

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 1, 2, 4-7, 12-13, 15-17, 19-20, and 22-25 are now pending in this application.

The Examiner issued an office action dated December 19, 2003 objecting to the drawings, as well as rejecting claims 1, 2, 4-7, 12-13, 15-17, 19-20, and 22-25 under 35 U.S.C. § 112, second paragraph, “as being incomplete for omitting essential elements, such omission amounting to a gap between the elements.” Claim 25 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Chevallier (U.S. Pat. No. 5,988,270) in view of Proctor et al. (U.S. Pat. No. 4,614,231). Applicants’ attorney, Matt Martin, spoke with Examiner Duong via telephone regarding the office action in an attempt to clarify the rejections and objections; however, no consensus was reached. Applicants believe the Office Action of December 19, 2003 should be withdrawn in its entirety and an new action issued allowing the application. As set forth below, the Office Action set forth a rejection to the drawings based upon a figure not in the application, an improper application of §112 paragraph two, and a piecemeal examination of the application itself.

Initially, Applicants respectfully point out that the Office Action constituted a piece-meal examination of the claims. Pursuant to MPEP 707.07(g), “[p]iecemeal examination should be avoided as much as possible. The Examiner ordinarily should reject each claim on all valid grounds available, avoiding, however, undue multiplication of references.” The Office Action of December 19, 2003 constituted a piecemeal examination. The Examiner indicated in his conclusion “the non-application of art against claims 1, 2, 4-7, 12-13, 15-17, 18-20, and 22-24 should not be construed as an indication that the claims contain allowable subject matter.” During the telephonic conversation, Examiner Duong took the position that the objection under § 112 of claims 1, 2, 4-7, 12-13, 15-17, 18-20, and 22-25 made it impossible for Examiner Duong to understand the invention as claimed and to perform a search regarding those claims and

therefore no art could be applied against the claims. However, Applicants are at a loss as to why Examiner Duong was able to understand and perform a search related to claim 25, which was also objected to under § 112. Regardless, Applicants believe that full reasoning for rejection should have been presented in the Office Action of December 19, 2004, regardless of any alleged objections under § 112. Therefore, Applicants expect that a subsequent Office Action would not be made final, as it is not Applicants' actions which would necessitate a new search.

Regarding the objection to the drawings. Examiner Duong has stated "Figure 29 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated." Applicants respectfully point out that the current Application contains Figure 1-19, but no Figure 29. However, in an attempt to respond to the Examiner's ill-worded office action, Applicants hereby submit an amended Figure 19, with the legend "Prior Art" added.

The Examiner objected to Claims 1,2,4-7,12-13,15-17,19-20, and 22-25 under 35 U.S.C. § 112, second paragraph, "as being incomplete for omitting essential elements, such omission amounting to a gap between the elements" citing to section 2172.01 of the MPEP. However, as Applicants' attorney discussed in the telephonic conversation with Examiner Duong, this objection is nonsensical. In accordance with the section of the MPEP relied upon by the Examiner, Applicants respectfully point out that a § 112, second paragraph rejection regarding unclaimed essential matter relates only to essential elements that are not interrelated in the claim as required. Therefore, it appears that, and during the telephonic conversation it was agreed that, the objection should have been made under § 112 first paragraph.

However, regardless of whether the Objection was in the proper form, Applicants believe that the Objection is improper as the claims contain all of the essential subject matter. As is clearly set forth in the specification, a means of sealing the openings of the connector is not an essential element of the invention as claimed. Independent claim 1 states claims "an outwardly directed flange formed integrally from a wall of the tubular body to sealingly enable or disable flow into channels between the plates". Dependent claim 3 and 4 further define the manner in which the flange provides a seal, (i.e. a fluid tight connection with a plate in claim 3 and

ring/aperture structure in claim 4). Therefore, the essential element of the invention is claimed, i.e. the flange sealingly enables or disables the flow. The manner in which this is accomplished is not essential to the invention, but rather is properly further defined by the dependent claims. Thus, Applicants submit the §112 objection of independent claim 1 and dependent claims 2,4-7,12-13,15-17,19-20, and 22-24 was improper and should be withdrawn.

Regarding independent claim 25, the Examiner has taken contrary positions. Applicants are at a loss as to how all of the pending claims could be objected to under §112 and no prior art applied against claims 1, 2, 4-7, 12-13, 15-17, 19-20, and 22-24 because the invention was not understood due to the alleged §112 objections; while claim 25 was both objected under §112 and rejected under §103. Regardless, the objection to claim 25 is also improper as the claim provides an outwardly directed flange “to form a fluid tight connection with the connecting grid”. Therefore, there is no omission as the Examiner has indicated, i.e. the flange sealingly enables or disables the flow. The manner in which this is accomplished is not essential to the invention, but rather is properly further defined by the dependent claims. Thus, Applicants believe the §112 objection of independent claim 25 was improper and should be withdrawn.

Regarding the rejection of claim 25 under §103(a) over Chevallier in view of Proctor et al., Applicants submit that the present invention is nonobvious over the cited prior art and that one of ordinary skill in the art would not be motivated to combine the teachings of Proctor with those of Chevallier. Applicants are perplexed by how one of ordinary skill in the art would combine Chevallier’s disclosure with that of Proctor to arrive at the invention as claimed in claim 25. Regardless, even the combined teachings of Proctor and Chevallier do not teach all of the elements of claim 25. Chevallier discloses the use of an opening with reference to a series of stacked heat exchangers having a pipe connection, wherein the pipe connection “is formed by joining together two half shells which are assembled together and which are interposed in the stack of heat exchanger plates.” It is this pipe connection the Examiner has equated to the connector of the present invention. However, the connector of the present invention relates to a boss which is part of the connecting grid rather than the heat exchanger plates as in Chevallier.

In addition, Proctor does not teach an "outwardly directed flange formed integrally from a wall of the tubular body to form a fluid tight connection." Rather Proctor teaches a flange that is a integral portion of any part of a boss but is rather merely a flange on a outlet tube.

Applicants believe that the present application is now in condition for allowance.

Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1450. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1450. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1450.

Respectfully submitted,

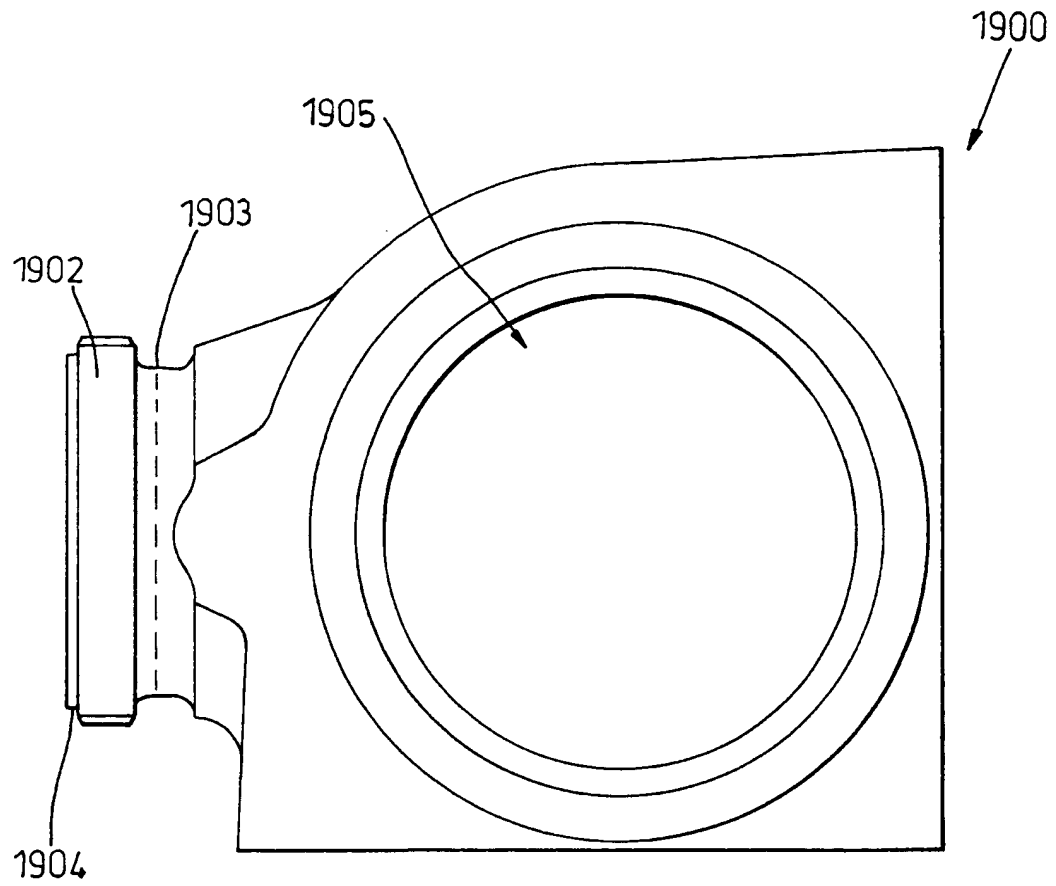
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Marked Version



PRIOR ART

*Legend
added*

Fig. 19